IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION LODGING NO.1629 OF 2006

Association of the Managements)
of Unaided Engineering Colleges)
(Mah.)a Society registered under)
the provisions of the Societies)
Registration Act, 1860 and also)
Public Trust, registered under)
the Bombay Public Trusts Act)
1950, having its registered)
office at K.K. Wagh Education)
Society, Hirabai Haridas)
Vidhyanagari, Amrutdham,)
Panchavati, Nashik-422 003)..Petitioners

Versus

1.The State of Maharashtra)
through the Department of)
Higher Technical Education)
2.The Director of Technical)
Education, Maharashtara State)
Having his office at 3,)
Mahapalika Marg, Opposite)
Metro Cinema, Dhobi Talao,)
P.B. No.1967, Mumbai-400 001.)
3.The Pravesh Niyantran Samiti)
having its office at 305,)

3rd Floor, Government)

Polytechnic Building, 49,)

Kherwadi, Ali Yavar Jung Marg)

Bandra (East), Mumbai-400 051.)..Respondents

Mr. S.G. Aney, Senior Counsel with Mr. F. Pooniwala,Mr.N.F. Dhilla and A.T. Deshpande i/b. Hariani & Co., for the Petitioner

Mr. A.A. Kumbhakoni, Associate Advocate General with Mr. M.D. Naik, AGP for Respondents.

CORAM: **F.I. REBELLO &**

MRS.V.K.TAHILRAMANI, JJ.

DATE: 26th July,2006

ORAL JUDGMENT (PER F.I. REBELLO, J.)

. Rule. Heard forthwith.

2. The petitioner is an Association of Unaided Private Engineering Colleges in the State of Maharashtra and is registered as a Society under the Societies Registration Act, 1960 and also as a Public Trust Act, 1950. The case of the petitioner is as under:-

. In P.A. Inamdar vs. State of Maharashtara (2005) 6 SCC 537, the Supreme Court has confirmed that Unaided Institutions have the right to admit

students of their on choice, subject to the admission procedures being fair, transparent and non-exploitative. The Supreme Court has permitted a group of institutions, imparting same or similar education, in one State or more than one State, to join together to hold a Common Entrance Test (CET for short) for admission. The Supreme Court has also permitted the State Governments to hold such CET.In terms of the Judgment of the Supreme Court Unaided Institutions are entitled to, reserve seats not exceeding 15% for Non-Resident Indians (NRIs)and for their children and wards. The Court has directed the State Governments to appoint Committees to oversee the admission process with a view to prevent possible malpractices in the admission process so as to ensure that merit is not the casualty. Respondent No.3 is a Committee appointed by the Respondent No.1 in the State of Maharashtra in terms of Judgment in P.A.Inamdar (supra) By the judgment the Supreme Court has made it clear that the Committee should give benefit of hearing to contending parties and if the Committee exceeds its power the decision of such Committees will be subject to judicial review. The petitioners, on behalf of its member institutions decided to conduct its own CET for admission to the First Year Engineering Course for the academic year 2006-2007. A Resolution to that effect was passed in the General Body Meeting of the petitioners. Some of the members, however, opted not to participate in the

CET conducted by the petitioners and instead opted to conduct the admission process through CET conducted by respondent No.1.

. By letter dated 30th December, 2005 the petitioner had written to respondent No.3, seeking permission to conduct its own CET. By letter of 30th January, 206 respondent No.3 informed the petitioners that they could conduct its own CET on any date apart from 21st May, 2006 when respondent No.1 was going to conduct its CET. Respondent No.3, therefore, informed the Petitioners that they were permitted to conduct their CET on 28th May, 2006. The petitioners were also informed at the meeting of the respondent No.3 held on 1st April, 2006 that the Committee had approved the brochure submitted by the petitioners for conducting the admissions, upto the stage of CET Examination and declaration of results only. The brochure, in so far as it related to stages beyond CET and declaration of results, was not approved at that stage. The petitioners contend that this action of the Committee is unlawful and exceeds the scope of the authority of respondent No.3 as it is created as a regulatory body and has merely a monitoring role.The members of the petitioners unanimously passed a resolution, at the meeting held on 15th January, 2006 to conduct the CET and subsequently 81 member Colleges gave their consent to admit students to the petitioner CET by letter addressed to 3rd

respondent. Some of these members thereafter opted for the CET conducted by respondent No.1. Petitioners wrote to respondent No.3, seeking a direction that the 81 colleges should be asked to appear for the CET conducted by the petitioners. As an incentive those colleges were permitted to admit 20% of the students through institute legal admissions, contrary to the judgment of the Supreme Court. As a result out of 81 member institutions, 61 institutes who were earlier to participate in the CET conducted by the petitioners decided to follow the admission process based on CET conducted by respondent No.1. Respondent NO.3 gave an option to the colleges either to appear for the CET conducted by the petitioners or by respondent No.1. A petition came to be filed by this petitioner being Writ Petition No.3169 of 2006 which has been admitted.

3. The petitioners held the CET on 28th May, 2006 and announced their results on 22nd June, 2006. The CET was held at 115 centres all over India. 43031 students from Maharashtra and 5667 students from outside Maharashtra appeared for the CET conducted by the petitioners. By letter dated 9th June, 2006, the petitioners informed respondent No.3 about the admission procedure that it proposed to follow in respect of the students that had appeared for their CET. By letter of 19th June, 2006 the petitioners forwarded to respondent No.3 its

"Preference-cum-Eligibility Brochure". Respondent No.3 was informed that in case any clarification was required by respondent No.3 the petitioners be heard. There were subsequent letters. However, no intimation was received from respondent NO.3. The petitioners came across a newspaper item in the Mumbai Edition of Sakal Newspaper published on 11th July, 2006 about the admission procedure of respondent No.1, by which the first date for receiving admission forms was 11th July, 2006 and the last date was 18th July, 2006. Allotment of seats from Maharashtara State and All India would be 28th July, 2006. This was pointed out by the petitioners to respondent No.3. It is also pointed out that in terms of Government Resolution they would reserve 33% seats and that as admission procedure of respondent No.1 had already started the petitioners desired to start its admission procedure immediately. Reference need not be made to subsequent correspondence. The respondent NO.3 by letter of 13th July, 2006 forwarded to the petitioner the decision taken at its meeting held on 12th July, 2006. Various conditions were imposed on the petitioners which may be reproduced as under:-

1 Break up of 70:30 in respect of Home University and other than Home University area seats is not indicated in the brochure.

The same may be applicable and implemented on the lines of the similar provision given in Rules and Institute Information Brochure for Academic Year 2006-07 of Engineering/Technology - published by the Directorate of Technical Education, Government of Maharashtara, Mumbai.

2. The provisions made by the Government of Maharashtra for reservation of the Backward Class candidates, Physically Handicapped and Defence candidates and Women candidates should be made during the Centralized Allotment Process (CAP) allotment round of the admission.

3. NRI seats (15%) are shown to be filled at the Institute level in all institutes. However, as per the policy of the AICTE, permission to fill Foreign/PIO etc. seats (which is 15% over and above the sanctioned intake) is granted only to select institutes satisfying the stringent conditions laid down by the AICTE. As such, it would be appropriate to grant permission to fill NRI seats only to such institutes which have been granted permission to fill seats for Foreign/PIO etc. by the AICTE (Rule 1.O.I & 1.0.II).

4. In the rules for the vacancy rounds of admission at the Institute level (Rule 10.0) it is indicated that the admissions shall be done at the Institute level based on the score of the MH-ENG-ASSO-CET 2006. However, all such admissions should be carried out only through the additional rounds of Centralized Allotment Process (CAP) to be conducted by the concerned Competent Authority of the Association.

5. In the guidelines for the vacancy round of admissions in Unaided Institutes which are participating in the CAP being conducted by the Directorate of Technical Education, the Unaided Institutes are permitted to fill up the seats in the following order:-

(i) Maharashtra State candidates from Government CET.

(ii) Maharashtra State candidate on the basis of the marks in Physics, Chemistry and Mathematics obtained in Science XIIth Standard,

(iii) Maharashtra State candidates on the basis of Diploma marks,

(iv) OMS candidate from Government CET,

(v) OMS candidate on the basis of the marks in Physics, Chemistry and Mathematics obtained in Science XIIth Standard, and

(vi) OMS candidate on the basis of Diploma marks.

This provision was done in view of the confidence shown by the participating Unaided Institutes in the Government CET and CAP and can be viewed as a Package Deal.

6. Further the schedule of the CAP round of the admission by the Competent Authority of the Association should be in synchronization with the schedule of the Government CAP.

4. It is the case of the petitioners that these conditions are illegal, contrary to the judgment of the Supreme Court and in excess of jurisdiction vested in respondent No.3. The conditions have been imposed without giving any personal hearing to the petitioner and as such in violation of the principles of natural justice. There is an averment that these conditions have been malafidely imposed by the Respondent No.3 which has been constituted by

respondent No.1 in order to favour the private unaided engineering colleges, which have opted to give admissions through respondent No.1's CET and in order to put at a disadvantage the private unaided engineering colleges which have opted to give admissions through the petitioner's CET. The conditions, it is, therefore, set out, are discriminatory as well, since they treat equals unequally.

5. The grounds raised challenging the said communication of 13th July, 2006 may now be set out. It is firstly submitted that the Supreme Court in Islamic Academy of Education, (2003) 6 SCC 697 and P.A. Inamdar (supra) has held that the respondent No.3. can only monitor and oversee admissions so as to ensure that merit is not the casualty.This power does not include the power to grant permission to the admission process and brochure of the petitioner or lay down reservation or preferences in the matter of admission. The petitioner had intimated to respondent No.3 the admission process and brochure. The only power that the respondent No.3 had, was to see that the admission procedure and brochure did not disregard merit. The decision, it is, therefore, set out, in so far as it purported to grant "permission" to the petitioner for its admission process and brochure is illegal, contrary to the judgment of the Supreme Court and in excess of the jurisdiction

vested in the respondent No.3.

. By Condition No.1, of the decision of 12th July, 2006, the respondent No.3 has directed the petitioner to break up the available seats in the ratio of 70:30 in respect of Home University and other than Home University seats. This condition is sought to be imposed on the petitioners, only because similar procedure exists in the brochure published by respondent No.2. It is submitted that considering the judgment of the Apex Court it was not open to respondent No.3 to have imposed such a condition. The entire object of the Supreme Court in insisting on CET was to ensure that admission to professional courses would be available in order of merit and homogeneity and to curtail imbalances, caused by regionalism and ghehto-isation of education.

. By condition No.2 the petitioners have been called upon to make provisions for reservation for backward class candidates, physically handicapped candidates, defence candidates and women candidates during the CET. It is submitted that respondent No.3 had no jurisdiction to impose the condition and the condition is contrary to the judgment of the Apex Court in P.A. Inamdar (supra). Respondent No.1, it is pointed out, has promulgated Ordinance which seeks to reserve seats in private unaided institutions for Scheduled Caste, Scheduled Tribes, De-Notified Tribes

(Vimukta Jatis), Nomadic Tribes and Other Backward Classes. The petitioner is bound by that and has agreed to reserve 32.5% of seats for the aforesaid classes as per the Ordinance. The condition NO.2 in as much as it directs reservation other than what is provided by respondent No.1 in its Ordinance is without jurisdiction as also arbitrary and illegal.

. The petitioners, it is submitted, have been permitted to admit students to the extent of 15% of the sanctioned intake through NRI quota. The respondent No.3 has by condition 3 has imposed that seats can be filled in by only such institutes which have been granted permission to fill the Foreign/PIO category by the AICTE. It is submitted that this is clearly arbitrary, without jurisdiction and contrary to law laid down by the Supreme Court in P.A. Inamdar (supra).

. By condition No.4 the petitioners have been called upon to make admissions apart from the first round, for the remaining seats through additional rounds of CAP to be conducted by the concerned Competent Authority of the petitioners. In its brochure the petitioners had stated that only one round of admission is carried out with CAP and the remaining vacant will be filled in at the institute level on the basis of Association CET merit . If there were no CET candidates, then preference will be given to

AIEEE qualified candidates and thereafter Diploma holders. Condition No.4 directs the petitioners to carry out admissions only through additional rounds of CAP. It is pointed out that the Government Colleges and other unaided private colleges which are granting admission through Respondent No.1's CET, will have only one round of CAP and then they can fill the remaining seats at the institute level. Reliance is placed on the Borchure published by Respondent No.2. It is set out that, therefore, colleges who were similarly situated like members of the petitioners, but who have opted for CET conducted by respondent No.1 and 2 will be permitted to admit students after first round, whereas the members of the petitioners who appeared for the CET conducted by the petitioners have to have additional rounds. By this process the private colleges who had appeared for the CET conducted by respondent No.1 will complete the admission process earlier whereas that of the petitioner will be inordinately delayed.

This, it is pointed out, is arbitrary.

6. A reply has been filed on behalf of the Respondent Nos. 1 and 2. It is set out that the 3rd respondent had given a choice to the private colleges either to join the CET conducted by respondent No.1 or the petitioners. Out of 142 colleges, 121 colleges preferred to join the CET along with the admission process to be conducted by the State

Government. Amongst these 121 colleges are included 61 colleges who are members of the petitioner association. Only 20 member colleges preferred to remain with the petitioner Association. Reliance then is placed on the judgment of Islamic Academy of Education (supra), P.A. Inamdar as also T.M.A. Pai Foundation, (2002) 8 SCC 481. Respondent No.3, it is pointed out has jurisdiction to regulate, monitor and control at the initial stage itself the admission procedure to be adopted by the petitioner association. Respondent NO.3, it is set out has is duty bound to ensure the admission procedure of the petitioner association is fair, transparent, non-exploitative and even otherwise in accordance with law. In so far as the first break up 70:30 it is submitted it is necessary to protect not only the local needs, but also to protect the State level meritorious students of their choice of college and is aimed at achieving the objects set out in para..68 of the judgment in T.M.A. Pai. If such break up is not prescribed, it may happen in a given case that at a given college, not even a single local student may be able to get admission. Similarly, at the State level, meritorious students coming from rural areas, may not be able to get admission in a college situated at metropolitan cities like Mumbai and Pune which have better infrastructure and quality education.The object of 70:30 is aimed to strike a balance amongst the students in the State. It is,

therefore, submitted that it cannot be said that Condition No.1 is arbitrary and/or illegal.

. In so far as the reservation is concerned, it is pointed out that it is governed by the provisions of Ordinance No.V of 2006 dated 16th June, 2006. The petitioner Association is bound to provide for reservation in terms of the said Ordinance. The condition of reservations will have to be implemented only to the extent of the aforesaid provisions.

. In so far as N.R.I. seats are concerned, petitioners are bound to follow the procedure laid down by AICTE for admission of students against NRI quota and it cannot, therefore, be said that the condition is arbitarary and/or illegal.

. In so far as conducting several rounds of Centralised Admission Process is concerned, it is submitted that the Supreme Court in case of Health Science Courses has issued an order. It is pointed out that Centralised Admission Process minimizes commercialization of education by granting admission on available seats guided by not the paying capacity of the candidates rather their relative merit. It has been the experience of the 3rd respondent that on the first round itself, allotments are so made as to create artificial vacancies and then such seats remaining vacant are filled in by students at the

cost of merit. In order to obviate any such mischief and to leave no scope for grant of such illegal admissions, the impugned conditions have been imposed and consequently there is no arbitrariness. It is finally submitted that the admissions through the CET as also CAP conducted by the State cannot be compared with each other. Each of the schemes have advantages as also disadvantages. For all the aforesaid reasons it is set out that there is no merit in this petition, which should be dismissed.

7. The question, therefore, that we have been called upon to answer is, what is the extent and scope of the jurisdiction of respondent No.2 in the matter of monitoring and controlling the admission process of students to educational institutions who have joined the CET conducted by the petitioners.

8. We may first gainfully make a reference to the judgment in Islamic Academy of Education (supra). The Supreme Court was considering the judgment in T.M.A. Pai Foundation (supra). The Supreme Court framed four questions. We are concerned with Question NO.4 which reads as under:-

> "(4) whether private unaided professional colleges are entitled to admit students by evolving their own method of admission."

Addressing itself to the issue the Apex Court in para.16 has observed as under:-

> "16. That brings us to the question as to how the management of both minority and non-minority professional colleges can admit students in the quotas allotted to them. Undoubtedly, the majority judgment has kept in mind the said reality that there are a large number of professional colleges which indulge in profiteering and/or changing of capitation fees. It is for this reasons that the majority judgment provides that in professional colleges admission must be on the basis of merit. As has been rightly submitted, it is impossible to control profiteering/charging capitation fees unless it is ensured that admission is on the basis of merit. Also, as has been rightly pointed out, if a student is required to appear at more than one entrance test it would lead to great hardship. The application fees charged by each institute, even though they may be only Rs.500 to Rs.1000 for each institute, would impose a heavy burden on the students who will necessarily have to apply to a number of colleges. Further, as has been rightly pointed out, students would have to arrange for transport from and to and stay at

various places if they have to appear for individual tests conducted by each college. If a student has to go for test to each institute it is possible that he/she may not be able to reach, in time, the venue of a test of a particular institute. In our view what is necessary is a practical approach keeping in mind the need for a merit-based selection. Paragraph 68 provides that admission by the management can be by a common entrance test held by "itself or by the State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance test to be conducted by the association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authority and the Committee set up hereinafter. If any professional college

chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice-board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee. Selection of students must then be strictly on the basis of merit as per that merit list. Of course, as indicated earlier, minority colleges will be entitled to fill up their quota with their own students on the basis of inter se merit amongst those students. The list of students admitted, along with the rank number obtained by the student, the fees collected and all such particulars and details as may be required by the concerned authority or the Committee must be submitted to them forthwith. The question paper and the answer papers must be preserved for such period as the concerned authority or Committee may indicate. If it is found that any student has been admitted dehors merit, penalty can be imposed on that institute and in appropriate cases recognition/affiliation may

also be withdrawn." (emphasis supplied).

. After further discussion the Court was pleased to issue directions. Gainful reference can be made to para.19, which reads as under:-

> "We now direct that the respective State Governments do appoint a permanent Committee which will ensure that the tests conducted by the association of colleges is fair and transparent. For each State a separate Committee shall be formed. The Committee would be headed by a retired Judge of the High Court. The Judge is to be nominated by the Chief Justice of that State. The other member, to be nominated by the Judge, would be a doctor or an engineer of eminence (depending on whether the institution is medical or engineering/technical). The Secretary of the State in charge of Medical or Technical Education, as the case may be, shall also be a member and act as the Secretary of the Committee. The Committee will be free to nominate/co-opt an independent person of repute in the field of education as well as one of the Vice-Chancellors of the University in that State so that the total number of persons on

the Committee do not exceed five. The Committee shall have powers to oversee the tests to be conducted by the association. This would include the power to call for the proposed question paper(s), to know the names of the paper-setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee shall supervise and ensure that the test is conducted in a fair and transparent manner." (emphasis supplied).

9. After the judgment in Islamic Academy of Education (supra) which basically interpreted the judgment in T.M.A. Pai Foundation, several other unsettled questions as also some aspects of clarifications were again before the Supreme Court in P.A. Inamdar (supra). We are only dealing with the Question No.4 namely as framed in Inamdar and the Committees formed pursuant to the judgment in Islamic Academy of Education (supra). We may gainfully reproduce paragraphs 143, 144 and 146, which read as under:-

"143. The learned Senior Counsel appearing for different private professional institutions, who have questioned the scheme of permanent Committees set up in the judgment of Islamic Academy very fairly do

not dispute that even unaided minority institutions can be subjected to regulatory measures with a view to curb commercialisation of education, profiteering in it and exploitation of students. Policing is permissible but not nationalisation or total takeover, submitted Shri Harish Salve, the learned Senior Counsel. Regulatory measures to ensure fairness and transparency in admission procedures to be based on merit have not been opposed as objectionable though a mechanism other than formation of Committees in terms of Islamic Academy was insisted on and pressed for. Similarly, it was urged that regulatory measures, to the extent permissible, may form part of conditions of recognition and affiliation by the university concerned and/or MCI and AICTE for maintaining standards of excellence in professional education. Such measures have also not been questioned as violative of the educational rights of either minorities or non-minorities.

144. The two Committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy are in our view, permissible as regulatory measures aimed at protecting the interest of

the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non-exploitative terms in their institutions. Legal provisions made by the State Legislatures or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) of the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of general public under Article 19(6) of the Constitution.

146. Non-minority unaided institutions can also be subjected to similar restrictions which are found reasonable and in the interest of the student commodity. Professional education should be made accessible on the criterion of merit and on non-exploitative terms to all eligible students on a uniform basis. Minorities or non-minorities, in exercise of their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions

based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure." (emphasis supplied).

Then in para.147 the Supreme Court has been pleased to hold that the scheme evolved out of setting up the two Committees for regulating admissions and determining fee structure by the judgment in Islamic Academy cannot be faulted. The Court was also pleased to hold that "we do not see any impediment to the constitution of the Committees as a stopgap or ad hoc arrangement made in exercise of power conferred on the Supreme Court by Article 142 of the Constitution until a suitable Legislation or Regulation is framed by the State. Till date neither the Union of India nor the State Government have enacted any suitable legislation on that count." The power of the Committee was specifically spelt out in Islamic Academy which was to oversee the test to be conducted by the Association, which included the power to call for the proposed question paper to know the names of the paper-setters and examiners and to check the method adopted to ensure papers are not leaked. The Committee was also empowered to supervise and ensure that the test is conducted in a fair and transparent manner.

1O. After the judgment in Islamic Academy of Education (supra) the Committees constituted started issuing directions. By one such direction a Committee constituted in this State directed non-approval of students admitted based on the CET and issued further direction to admit students who had secured more marks and whose names were given even after 30th September, which was the cutoff date for admission to medical colleges, as has been laid down by the Supreme Court in **Medical Council of India vs. Madhu Singh and Ors., (2002) 7 SCC 258**. The issue as to the jurisdiction of the Committee to oversee the admission process and/or issue directions came up for consideration in Padmashri Dr. Vithalrao Vikhe Patil Foundation's Medical College vs. Pravesh Niyantran Samiti in Original Side Writ Petition No.3212 of 2004 and another Petition which were disposed of by this Court on 25th April, 2005. After considering the law declared by the Apex Court in Islamic Academy, this Court observed as under:-

> "From the above observations, the powers of the Samiti have been set out. Atleast from this observations it is not possible to spell out a power to cancel admissions and/or to direct issuance of admissions though it may be possible to hold, but we are not commenting at this stage, considering that the directions were issued after the cutoff

> date 30th September, 2004, to bring to the attention of the College that there are students who have secured more marks and who are entitled to be admitted if otherwise they meet the requirements."

It was also urged before this Court that students had been admitted by the management by violating the merit list. It is open to the University or the Medical Council of India to impose penalty or withdraw the recognition of the institution. This Court had observed that there may be some merit in what is being contended on behalf of the Samiti. It was also observed in para.15 as under:-

> "15. We are painfully aware that there may be cases where and specially in the last round where merit list on occasions may not be followed in the absence of a full proof mechanism. It is not possible for this Court to issue any direction more so considering the judgment of the Apex Court in Islamic Academy of Education & Anr.(supra)."

Subsequent to that the Supreme Court was seized of the matter in the case of P.A. Inamdar (supra). The Supreme Court noted some of these aspects while dealing with the question No.2 i.e. admission procedure of Unaided Educational Institutions. The

Supreme Court in para.138 observed as under:-

> "138. It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralised and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis. Till regulations are framed, the Admission Committees can oversee admission so as to ensure that merit is not the casualty."(emphasis supplied).

On behalf of the Respondent State the learned Associate Advocate General, submits that considering the judgment in P.A. Inamdar it is now open to the Committee not only to oversee the conduct of examinations but also to monitor the admissions and see that the admissions are based on the merit list.

11. The admission brochure had been forwarded to the Committee. The Committee at its meeting held on 1st April, 2006 at 11.00 a.m. approved the brochure to the extent of conduct of CET examination and declaration of results only. It was further set out that brochure in so far as it relates to stages

beyond CET and declaration of results will be subject to further orders to be issued by the Samiti. The brochure beyond that stage was not approved at that stage. The petitioners were subsequently informed by the Samiti by communication dated 13th July, 2006, that in respect of the admission process and preference-cum-eligibility, in the Brochure for the academic year 2006-07 the admission procedure would be subject to the conditions which we have reproduced in paragraph three. We will now examine the legality of these conditions.

12. **Condition No.1:** This condition has already been reproduced above. By this condition the petitioners were called upon to fill in the seats on 70:30 basis i.e. Home University and other than Home University, in the same manner as the brochure published by the Directorate of Technical Education, Government of Maharashtra, Mumbai. In other words the petitioners have been informed that the admission process would not be based on the merit list alone, but 70% of the seats would be filled in from colleges within the University area and as such the inter se merits of the student in the university area will be the criteria and 30% of the seats were to be filled in from all over Maharashtra based on the merit list. The merit, therefore, will be on university basis and all Maharashtra basis. Counsel for the Petitioners contends that this action is arbitrary and was not in

terms of the powers conferred on the Committee by the Apex Court. On the other hand on behalf of the respondents it is submitted that that the Condition was within the jurisdiction of the Committee, as merit is not given a go-bye, but what is maintained is the regional balance and rural balance and as such this Court ought not to interfere with the said condition.

. We have earlier reproduced the relevant paragraphs of the judgment in Islamic Academy and P.A. Inamdar. The direction issued by the Apex Court under Article 142 of the Constitution are to monitor the conduct of the examinations and regulate the admission procedure based on the results of CET in the order of merits. There is no power in the Committee to impose conditions of admissions by way of reservations between home university and other than Home university. Such an assumption of power is not traceable to the constitution of the Committee and/or their power to conduct the examinations and/or monitor and regulate the admission process. What the Committee is doing is taking a policy decision as to how the seats in the colleges of the petitioner members should be filled in. This, in our opinion, is totally without jurisdiction and beyond the scope and power conferred on the Committee to monitor the conduct of the examinations and or oversee the admission process. The Committee has to exercise

jurisdiction to the extent the Supreme Court has conferred power on it by issuing direction under Article 142, until such time a law is enacted on the subject. The Committee, therefore, acted without jurisdiction in directing the members of the petitioner association merely because the State Government has a policy of 70:30, to follow the same. It is, therefore, always open to the State Government to make such a law which law would also then be applicable to the petitioner institutions. In the absence of a law it is the directions issued under Article 142 of the Constitution by the Supreme Court in Islamic Academy and P.A. Inamdar, which would be the law in force. On a consideration of the two judgments, we do not find that the Committee constituted in terms of the judgment of Islamic Academy and as approved in P.A. Inamdar had been conferred the power to impose reservation for admission based on Home University or other than Home University or otherwise. That condition, to our mind, is clearly without jurisdiction and consequently that has to be quashed and set aside. At the same time as a model State the State of Maharashtra ought to have taken a lead in enacting a law, which surprisingly till date has not been done. We hope and expect that the State would, to ensure transparency and that meritorious students alone are admitted and to prevent those amongst the Private Managements, who exploit the present loopholes to

admit less meritorious students.

13. **Condition No.2:** The Committee has directed the petitioners to make provisions for reservation of the Backward Class candidates, Physically Handicapped and Defence candidates and Women candidates during the Centralized Allotment Process. The Respondent State has filed a reply and it has fairly admitted that the reservations which are to be followed by the members of the petitioner, are those reservations pursuant to the law made by the State in terms of ordinance No.5 of 2006. In para.8 of the affidavit in reply filed by Navnath Baburao Pasalkar the State has clearly so admitted. We are clearly, therefore, of the opinion that the direction issued by the Committee to provide reservations for Physically Handicapped and Defence candidates and Women candidates was without jurisdiction. It was not within the jurisdiction of the Committee to provide for reservation. It is,however, open to the State Legislature to do so which the State Legislature has done by the Ordinance and which Ordinance would be binding on the petitioners. To that extent the challenge to Condition No.2 is partly accepted.

14. **Condition No.3:** The Committee has directed that the members of the petitioners association can only fill the 15% of the N.R.I. seats in their institute, if those institutes have been granted

permission to fill seats for Foreign/PIO etc. by AICTE. On behalf of the respondents it was strenuously argued that this was within the competence of the Committee and more so considering the regulations of All India Council for Technical Education. There were earlier Regulation known as All India Council for Technical Education Regulation for Admission of NRI/Foreign Nationals/Persons of Indian Origin dated April 24, 2002 Regulation 3.9 defines as to who is Non-resident and Regulation No.3.10 defines NRI seats meaning the seats for admission of NRI to the programmes in "Technical Education". Apart from that Regulation 3.11 defines "Persons of Indian Origin" (PIO). Regulation 3.12 defines "Foreign National" and Regulation 3.13 defines "Foreign Student". Admission to the seats for P.I.O. and Foreign national was provides by Regulation No.5 whereas admissions to NRI was regulated by Regulation 4. In so far as NRI seats are concerned, 5% of the 50% payment seats were to be earmarked for NRIs. Under Regulation 5 in so far as Foreign Nationals/Persons of Indian Origin supernumerary seats were to be created to the extent of 15% if approved by AICTE. These regulations have since been repealed by the All India Council for Technical Education (admission under Supernumerary Quota for Foreign Nationals/Persons of Indian Origin (PIOs)/Children of Indian Workers in the Gulf Countries, in AICTE approved Institutions)

Regulations, 2004. As set out earlier these Regulations have specifically repealed Regulation dated April, 24, 2002, By these Regulations, 5% of the 50% payment seats from the intake capacity of the institute is reserved for NRIs. In para.131 of P.A.Inamdar, (supra) the Apex Court observed that "a limited reservation of such seats, not exceeding 15% may be made available to NRIs depending on the discretion of the management subject to two conditions, First, such seats should be utilised bona fide by NRIs only and for their children or wards. Secondly, within this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilised for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institutions may admit on subsidised payment of their fees. The Court also observed that to prevent misultisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be implemented. It is clear, therefore, that the Apex Court itself has directed the admission of N.R.I. students to the extent of 15% of the seats. AICTE has not imposed any such condition in so far as NRIs are concerned. Such a condition has only been imposed in respect of supernumerary quota for Foreign Nationals/Persons of Indian Origin/Children of Indian Workers. Expression "supernumerary" would be other

than the intake seat which have been approved by the AICTE. Condition No.3, therefore, imposed by the Samiti is clearly without jurisdiction and liable to be quashed and set aside to the extent of admission to N.R.I. seats from the intake capacity as approved by A.I.C.T.E.

15. **Condition No.4:** By this condition the Committee has directed the petitioners that admission should be carried out only by way of additional rounds of Centralized Allotment Process (CAP) to be conducted by the concerned Competent Authority of the Association. This has been challenged by the petitioners, as being beyond the jurisdiction of the committee. We have already reproduced para.145 of the judgment in P.A. Inamdar wherein the Court rejected the contention sought to be urged on behalf of the minority and non-minority institutions that the same could be achieved by post-audit or checks after the institutions have adopted their own admission procedure. The Apex Court observed that unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb. By this condition all that has been done is a direction to the petitioners to continue the admission process by additional round of Central Allotment Process till

all seats are filled in. We do not think that the petitioners can be aggrieved by the said condition, as it is to monitor the admission process, which is within the jurisdiction of the Committee. The petitioners, however, point out that those of their members who are filling the seats through the C.E.T. conducted by the respondent No.1 State, those institutions under Clause 6 of the Brochure issued by the Directorate of Technical Education, Maharashtra State, Mumbai have to follow only one centeralized round (CAP Round-1) of allotment. This round will be conducted by direct allotment method separately for Maharashtra State candidates and for All India seats. The vacancies remaining vacancy after CAP, will be filled at the Institute level without any further rounds of C.A.P. In other words after the first round it is open to those institute who have opted for CET of the State to make admission without following to additional rounds. It is pointed out that it is the State which has been complaining that the Private Institutions are defeating the merit scheme, by admitting students who are less meritorious. Our attention is invited to the contention urged and observation of this Court in the judgment in Padmashri Dr. Vithalrao Vikhe Patil (supra). It is pointed out that this is only being done as a favour to these institutions, as they joined the CET conducted by the State Government.

. We are surprised by this approach of the State Government. Before us, in other matters, the stand of the State is that the Private Institutions are misusing the last round to admit students who are less meritorious by denying admission to students who are more meritorious. The object of the CAP and the setting up of the Committee is to ensure that there is no malpractice in the conduct of examination and the admission process. The Committee cannot control the admissions done by the CET conducted by the State Government. Clause 6 is a 'gift' if one may borrow the expression, by the State Government to those Private management who have agreed to fill the seats through CET conducted by them. It is possible that those institutes may strictly admit students on merits, just like the members of the petitioners. It is, however, the State Government which has been complaining before this Court that private Managements have been defeating the rights of meritorious students based on complaint received. We are, therefore, unable to comprehend the object in permitting the private Management to fill in the seats after the first round of CAP at the institute level. This would be to defeat to the judgment in Islamic Academy and P.A. Inamdar. It is not possible to have two different procedures for admission to private Colleges, one for those who appear for the CET conducted by the petitioners and the other for the CET conducted by the State

Government. The State Government is bound by the direction issued by the Supreme Court that admission process must ensure that meritorious students alone are admitted. In our opinion this would be a fit case where this Court in the exercise of our extra ordinary jurisdiction issue directions to respondent Nos. 1 and 2, to direct that the admission process after the first round in those private colleges who are filling in seats based on CET conducted by the State will fill in the unfilled quota of seats by additional rounds. Respondents 1 and 2 to comply with this forthwith.

16. **Condition No.6:** We fail to understand as to what purpose and object would be served after the committee has directed the petitioners after the first round to follow additional rounds. The procedure, as pointed out earlier for the CAP conducted by the State Government is only one round apart from some other rounds for seats meant only in Government institutions or Government aided and University Department seats. To that extent Condition No.6 serves no purpose except to delay the admission process of the petitioners. We, therefore, strike down the said condition No.6, though it be within the monitoring process, as an illegal retract on the procedure for admission.

17. For the reasons as indicated above, we

dispose of this petition by issuing the following directions:-

(i) Condition No.1 as laid down by the Pravesh Niyantran Samiti in its meeting held on 12th July, 2006 at 12.00 p.m. under Item NO.3 of its agenda is clearly contrary to the judgment of the Apex Court as laid down in **Islamic Academy of Education & Anr. vs. State of Karnataka & Ors., (2003) 6 SCC 697** and as further reiterated in paragraphs 143 and 144 of the judgment of the Apex Court in **P.N. Inamdar & Anr. Vs. State of Maharashatra & Ors. (2005) 6 SCC 537**. The said Condition is, therefore, quashed and set aside, being void.

(ii) In so far as direction No.2 is concerned that direction is declared invalid partially. The managements who have applied for the CET conducted by the petitioner, will admit students in terms of Maharashtra Ordinance No.5 of 2006 as published in the Maharashtra Government Gazette on June 16, 2006.

(iii) In so far as direction NO.3 is concerned, it will be open to the members of the petitioner Association to admit students against N.R.I. quota upto 15% in terms of the judgment of the Apex Court but within their intake capacity of seats permitted by A.I.C.T.E. If, however, any management seeks to admit against supernumerary quota for Foreign

Nationals/Persons of Indian Origin, Children of Indian Workers in the Gulf Countries, then they will have to follow the Regulation issued by AICTE and which are known as All India Council of Technical Education (admission under supernumerary quota for Foreign Nationals/Persons of Indian Origin (PIOs)/Children of Indian Workers in the Gulf Countries, and admit such students from this category also if AICTE grants approval.

(iv) In so far as Condition NO.4 is concerned we find that it was within the jurisdiction of the Committee to lay down the said guide-lines to avoid malpractices if any, in the admission of students. We, therefore, find no cause for interference with the said guide-lines.

(v) In so far as Condition No.6 is concerned, we do no find that considering the direction issued by the Committee in terms of Condition No.4 that further restriction could have been imposed on the petitioners by way of guide-line No.6. We, therefore, hold that Guide-line No.6 to be illegal and consequently we strike down the same.

(vi) The Committee could not have imposed any conditions in respect of those private managements which are following the Government's CET. In respect of those private institutions, there is only one CAP

round and thereafter it is left to them to fill in seats. This is highly undesirable, considering the arguments advanced before us by the State of Maharashtra on several occasions. We, therefore, direct the State of Maharashtra in respect of those Private Unaided Institutions who are filling in seats through the CET conducted by the State of Maharashtra, to issue similar directions as in respect of the members of the petitioner institutions. Those directions to be issued forthwith.

(vii) Rule made absolute accordingly. In the circumstances of the case there shall be no order as to costs.

(**F.I. REBELLO,J.)**

(**MRS.V.K.TAHILRAMANI, J).**